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No. 94-1239

In The
Supreme Court of the United States
October Term, 1994

FULTON CORPORATION,
Petitioner,

v.

JANICE H. FAULKNER, SECRETARY OF REVENUE,
Respondent.

Petition For Writ Of Certiorari
To The Supreme Court of North Carolina

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the taxable percentage deduction provided for in N.C. GEN. STAT. § 105-203, which levies the intangible personal property tax on shares of corporate stock owned by North Carolina residents, violate the Commerce Clause of the United States Constitution by reducing the taxable value of a stock by a percentage of the value equal to the percentage of the issuing corporation's income taxable in North Carolina?

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BRIEF IN OPPOSITION

Respondent Janice H. Faulkner, Secretary of Revenue of the State of North Carolina, respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the opinion of the Supreme Court of North Carolina in this case. That opinion is reported *sub nom. Fulton Corp. v. Justus*, 338 N.C. 472, 450 S.E.2d 728 (1994).

STATEMENT OF THE CASE

A. The North Carolina Intangibles Tax

N.C. GEN. STAT. § 105-203 provides that "[a]ll shares of stock . . . owned by residents of this State . . . on December 31 of each year . . . shall be subject to an annual tax . . . of twenty-five cents ($.25) on every one hundred dollars ($100.00) of the total fair market value of the stock . . ."

The statute also provides for a deduction, commonly known as the taxable percentage deduction, which takes into account the North Carolina tax burden borne by the corporation whose stock is being taxed in the hands of the shareholder. It permits the shareholder, in computing his intangibles tax liability, to reduce the value of his stock by the percentage of value equal to the percentage of the issuing corporation's income subject to tax in North Carolina.[1]

The percentage of a corporation's total income taxable in North Carolina is determined under the provisions of N.C. GEN. STAT. § 105-130.4, the section of the Corporation Income Tax Act governing the allocation and apportionment

[1]N.C. GEN. STAT. § 105-203 refers to N.C. GEN. STAT. § 105-130.7, which authorizes a corresponding income tax deduction for dividend income reportable by the shareholder and which, in turn, refers to the state's corporate income tax laws. Copies of the relevant portions of N.C. GEN. STAT. §§ 105-203, 105-130.7, and 105-130.4, the corporate income apportionment statute, are included in the Appendix to the Petition at pages 36a-38a.

of corporate income. North Carolina uses a typical three-factor formula to apportion the business income of a multistate corporation based on the proportion of its total sales, property, and payroll attributable to the state.

The percentage of a corporation's income subject to tax in North Carolina is the corporation's "taxable percentage." If, for example, a multistate corporation has a taxable percentage of 38%, its resident shareholders are permitted under the taxable percentage deduction of N.C. GEN. STAT. § 105-203 to deduct 38% of the value of their stock in that corporation in determining their liability for intangibles tax. In such a case the stock would be described as 62% taxable for intangibles tax purposes. Similarly, a corporation engaged in business exclusively in North Carolina would itself be 100% taxable for income tax purposes, and its stock would be 0% taxable in the hands of its shareholders. Conversely, a corporation having no state income tax liability would be 0% taxable itself, but its shareholders would be taxable on 100% of the value of their stock.

The taxable percentage deduction is the only adjustment provided for in N.C. GEN. STAT. § 105-203. It applies uniformly to all stock held by residents of North Carolina without regard to whether the corporation issuing the stock is a foreign or domestic corporation and without regard to the state in which it maintains its commercial domicile.

B. Proceedings Below

As of December 31, 1990, Petitioner, a North Carolina corporation, owned stock in six other corporations.

Of these, five were 100% taxable for intangibles tax purposes, and the other was 54% taxable. Petitioner timely filed its 1990 intangibles tax return and paid under protest the tax shown due. When no refund was issued, Petitioner filed the present action to recover the tax paid. The complaint alleged, among other claims, that N.C. GEN. STAT. § 105-203, by virtue of the taxable percentage deduction, violated the Commerce Clause and the Equal Protection Clause of the United States Constitution.

The trial court entered summary judgment for the Respondent Secretary of Revenue, and Petitioner appealed. The North Carolina Court of Appeals did not decide the Equal Protection issue but ruled that the taxable percentage deduction violated the Commerce Clause. Petitioner was nevertheless denied relief because the court found the taxable percentage deduction to be severable from the balance of N.C. GEN. STAT. § 105-203 as a matter of state law. The court applied N.C. GEN. STAT. § 105-215, which directs that any judgment invalidating any clause, sentence, paragraph, or part of the Intangible Personal Property Tax Article be confined to that portion and not impair the remainder.

In a unanimous opinion authored by the Chief Justice, the Supreme Court of North Carolina reversed, holding that N.C. GEN. STAT. § 105-203 does not violate the Commerce Clause.[2] The court found the case to be controlled by *Darnell v. Indiana*, 226 U.S. 390, 33 S. Ct. 120, 57 L. Ed.

[2]Petitioner's Equal Protection claim was not before the court and was not decided.

267 (1912), this Court's only opinion involving a Commerce Clause challenge to a state intangible property tax on corporate stock. *Darnell* upheld Indiana's tax, finding that it achieved substantial equality in its treatment of the property of domestic corporations and the stock of foreign ones. The North Carolina court read *Darnell* as employing a compensatory tax analysis and concluded that N.C. GEN. STAT. § 105-203 created a compensatory tax scheme by considering the percentage of a corporation's income taxed in the state in determining the taxable value of its stock in the hands of its shareholders. The court rejected the argument that *Darnell* was distinguishable because North Carolina's offsetting corporate tax was an income tax rather than a property tax. It also rejected the suggestion that *Darnell* had been implicitly overruled by more recent Commerce Clause cases discussing the compensatory tax rationale. The court found such cases readily distinguishable from this one because they involved taxes falling directly upon the interstate commercial activity of multistate enterprises rather than a property tax having little or no effect on interstate commerce.

The North Carolina court made no finding as to whether N.C. GEN. STAT. § 105-203 was facially discriminatory. The opinion did recite that the intangibles tax was alleged to discriminate against the interstate ownership of corporate stock, but the court expressly found that the stock tax has no effect on a multistate corporation's trade and only a negligible effect on its ability to raise capital.

Following the entry of judgment by the Supreme Court of North Carolina, the Petition for a Writ of Certiorari was filed.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I. THE PETITION SHOULD BE DENIED BECAUSE IT PRESENTS NO FEDERAL QUESTION WHICH HAS NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT.

Petitioner asks this Court to grant the petition in order to pronounce that a state intangible personal property tax levied on resident shareholders--even one not in conflict with *Darnell* or with recent compensatory tax cases--must be analyzed under the internal consistency test announced in *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 103 S. Ct. 2933, 77 L. Ed. 2d 545 (1983), and further developed in *Armco, Inc. v. Hardesty*, 467 U.S. 638, 104 S. Ct. 2620, 81 L. Ed. 2d 540 (1984), and later cases. Petitioner seeks a ruling that the test must be applied not simply to the stock tax paid by resident shareholders but to the aggregate tax liability of those shareholders and of the corporations in whose stock they have invested. Petitioner's proposed expansion of the test has no basis in the decisions of this Court, and it should not be adopted because it would not serve the interests protected by the Commerce Clause.

A. Evolution of the Internal Consistency Test

The internal consistency test stems from this Court's decision in *Container Corp.*, which upheld a three-factor corporate income apportionment formula much like North Carolina's. The issue there was whether the statutory formula fairly attributed the income of a multistate corporation to the various taxing jurisdictions in which it operated. This Court stated that such a formula must have "what might be called internal consistency -- that is, the formula must be such that, if applied in every jurisdiction, it would result in no more than all the unitary business' income being taxed." 463 U.S. at 169, 103 S. Ct. 2933 at 2942.

The test was next applied in *Armco* to a claim that West Virginia's business and occupation (B&O) tax was unfairly apportioned and thereby discriminated against interstate commerce. Armco, a multistate manufacturer and seller of steel products, was not required to demonstrate that it suffered discrimination because of its obligation to pay specific taxes imposed by other states. Rather, the Court considered whether, if other states enacted West Virginia's B&O tax, multistate enterprises like Armco would be put at a competitive disadvantage. The tax was invalidated upon a finding that adoption of a like tax in other states would subject a multistate manufacturer/wholesaler to tax on both activities while its instate competitor, because of a multiple activities exemption in the West Virginia law, paid tax on only one.

Since *Armco*, the internal consistency test has been invoked to examine other kinds of state taxes. In *American Trucking Associations v. Scheiner*, 483 U.S. 2829, 107 S. Ct. 2920, 97 L. Ed. 2d 226 (1987), for example, it was used to strike down a Pennsylvania flat tax on motor carriers. The Court found that widespread adoption of such unapportioned taxes would subject interstate carriers to cumulative burdens and to relatively higher taxes than their instate competitors. In *Goldberg v. Sweet*, 488 U.S. 252, 109 S. Ct. 582, 102 L. Ed. 2d 607 (1989), it was applied to an Illinois tax on the privilege of originating or receiving interstate telephone calls. The Court upheld the tax based on its finding that any given call was potentially taxable by only two states and that, even if other states levied the same tax, the exclusion of calls not billed to an address within the state precluded taxation by more than one.

As these decisions illustrate, the internal consistency test has evolved somewhat since it was first articulated in *Container Corp.* It does not follow, however, that every Commerce Clause challenge to a state tax statute calls for review under the internal consistency test. Nor does it follow that the test should be applied in a given case by assuming any hypothetical tax structure that might be suggested by the facts of the case. More specifically, nothing in the development of the internal consistency test supports the adoption of an expanded test such as the one Petitioner urges upon the Court in this case. This Court never applied the test in a case involving a state property tax. It has never applied the test by hypothesizing the enactment in other states of a tax other than the very tax paid by the complaining taxpayer. Nor has it ever measured the impact of a hypothetical tax in terms of its effect on two discrete categories of taxpayers.

B. PLAINTIFF'S PROPOSED VERSION OF THE INTERNAL CONSISTENCY TEST DOES NOT FURTHER THE PURPOSES OF THE COMMERCE CLAUSE.

The internal consistency test is not a doctrine unto itself. It is applied, if at all, only to assess whether interests protected by the Commerce Clause are unduly burdened by a state tax. The test should be revised or expanded only where necessary to protect such interests. This is not such a case.

The Commerce Clause is directed toward the preservation of free and open trade. *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 97 S. Ct. 599, 50 L. Ed. 2d 514 (1977). The inquiry in a Commerce Clause challenge to a state taxing statute is whether the practical operation of the tax provides a direct commercial advantage to local business, *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959), or subjects interstate businesses to multiple burdens not borne by their instate competitors, *Tyler Pipe Industries, Inc. v. Washington State Dept. of Revenue*, 483 U.S. 232, 107 S. Ct. 2810, 97 L. Ed. 2d 199 (1987).

Accordingly, the internal consistency test has been applied to taxes levied upon commercial activity in order to determine whether widespread adoption of the tax under

consideration would create a competitive imbalance between interstate and intrastate commerce.

The instant case does not fit this mold.

The intangibles tax on stock owned by North Carolina residents as of December 31 each year is not a tax on any type of commercial activity. It is not levied upon stock transactions or upon stocks as articles of commerce. The shareholder liable for the tax is a mere investor. He is not engaged in commerce, interstate or otherwise, as to the stock. The tax he pays under N.C. GEN. STAT. § 105-203 is a property tax. The subject of the tax is the relationship between the shareholder and the stock as of a fixed point in time. The relationship is an indivisible one occurring in North Carolina and nowhere else.[3] A tax on that relationship poses no risk of multiple taxation and upsets no competitive equilibrium.

The internal consistency test simply makes no sense where, as here, the tax in question is not levied upon an activity in interstate commerce. Petitioner concedes as much by raising no argument that the adoption of a statute like N.C. GEN. STAT. § 105-203 by other states would cause stock held by any resident shareholder to be taxed at more than 100% of its value or by more than one state. As Petitioner must recognize, the tax on shareholders, even if

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[3]Petitioner concedes that "the instant case does not raise the difficult issues surrounding taxation of the same property by two states, each of which has a reasonable ground for taxing it." Petition p. 12.

replicated in all fifty states, does not unduly burden interstate commerce because stock ownership is not an event in interstate commerce. Petitioner's solution is to expand the test until it includes some form of interstate commerce, even if that commerce is conducted by a party other than the taxpayer liable for the tax under review.

Petitioner asks this Court to hypothesize not only that other states adopt a statute identical to N.C. GEN. STAT. § 105-203 but that they also adopt North Carolina's corporate income tax laws. Further, Petitioner's test would judge this hypothetical dual tax scheme by measuring its effect not only on shareholders such as itself but on the combined liability of shareholders for intangibles tax and of corporations for corporate income tax.

Not only does Petitioner's version of the internal consistency test represent a radical departure from this Court's prior applications of the test, but it makes this quantum leap without in any way advancing interests protected by the Commerce Clause.

On these facts, the only business activity requiring Commerce Clause protection is that conducted by the corporations. The only tax touching on that activity is the corporate income tax. The corporate income tax readily passes the internal consistency test because it fairly apportions income according to a three-factor apportionment formula of the kind approved in *Container Corp*. Aggregating the corporation and its shareholders adds nothing to the inquiry. It has no basis in economic reality. The commerce

carried on by the corporation is not a joint undertaking by the corporation and its shareholders. The shareholders undoubtedly hope that the corporation will prosper because of their concern for stock values, but it is the corporation alone that conducts the corporate business. Aggregating corporations and shareholders does not transform shareholders into interstate actors, and it does not transform stock ownership into an interstate event.

This Court should not grant the Petition in this case to consider Petitioner's suggested revision to the internal consistency test. Petitioner's proposal expands the test in ways not supported by this Court's fundamental Commerce Clause analysis or its prior applications of the test.

C. The Federal Question Raised by this Case Is Not One of General Interest.

Petitioner directs the Court's attention to two recent state appellate court decisions involving Commerce Clause attacks upon state intangibles taxes on shares of stock. The Indiana and Kentucky statutes at issue both took into account the property tax paid in the state by the corporation issuing the stock, and both taxes were upheld based on reasoning similar to that of the Supreme Court of North Carolina in this case.

Petitioner argues that these decisions signal a departure from this Court's internal consistency opinions and that, unless this Court intervenes, other state courts are likely to follow suit.

The Indiana and Kentucky cases were correctly decided, but, in any event, the issue to which they speak is not one on which a large number of states require guidance from this Court. According to a 1993 publication of the U.S. Advisory Commission on Intergovernmental Relations, only twelve of the states taxing any kind of intangible property include within their tax base shares of corporate stock or other equities. Of the twelve, only four, including North Carolina and Kentucky, have statutes making any allowance for other state taxes paid by the corporation issuing the stock.[4] U.S. Advisory Commission on Intergovernmental Relations, Significant Features of Fiscal Federalism: Budget Processes and Tax Systems, Table 45, p. 161 (1993).[5]

II. THE PETITION SHOULD BE DENIED BECAUSE THE DECISION OF THE SUPREME COURT OF NORTH CAROLINA IS NOT IN CONFLICT WITH A DECISION OF THE U.S. COURT OF APPEALS.

Petitioner contends that the issues raised by its proposed extension of the internal consistency test are "essentially the same" as the questions decided by the Second Circuit in *Barringer v. Griffes*, 1 F.3d 1331 (2nd Cir. 1993), *cert. denied*, __ U.S. __, 114 S. Ct. 879 (1994), and that the

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[4] The Indiana Intangibles Tax Act has been repealed. Pub. L. No. 80-1989, §§ 18, 19, 1989 Ind. Acts 912, 919.

[5] A copy of the table is reproduced in the attached Appendix at pages 1a-2a.

decision below conflicts "in principle" with *Barringer*. Petition p. 14.

The issue in *Barringer* was whether a Vermont vehicle use tax collected at the time of registration discriminated against persons relocating to Vermont by allowing a credit for sales tax paid to Vermont but not for sales tax paid to other states. The court invalidated the tax based on its finding that a taxpayer bringing a vehicle into Vermont from another state would pay more tax over the life of the vehicle than would a taxpayer purchasing and registering an identical vehicle in Vermont.

The Second Circuit applied the internal consistency test in reaching its decision, but its test assumed only that other states enacted Vermont's use tax scheme. *Barringer* did not depart from any previous formulation of the test by this Court. It most certainly did not extend the test, as Petitioner urges, to a state property tax. Nor did it posit the adoption by other states of two Vermont taxes or consider the aggregate liability under such a hypothetical tax structure of two different categories of taxpayers.

Barringer and the present case are distinguishable both on the facts and the law. There is no conflict between them requiring review by this Court.

III. THE PETITION SHOULD BE DENIED BECAUSE THE SUPREME COURT OF NORTH CAROLINA CORRECTLY APPLIED THE RELEVANT DECISIONS OF THIS COURT.

A. THE SUPREME COURT OF NORTH CAROLINA CORRECTLY FOLLOWED *DARNELL V. INDIANA*.

Darnell v. Indiana is this Court's only pronouncement on the application of the Commerce Clause to a state property tax on corporate stock owned by resident shareholders. It has never been overruled or even questioned by this Court, and the principles for which it was relied upon by the Supreme Court of North Carolina are as valid today as they were when Justice Holmes issued the opinion.

Darnell dealt with an Indiana intangibles tax that applied to the stock of domestic corporations to the extent the property of the corporation had not been taxed in the state and to the stock of foreign corporations without allowance for any Indiana property tax paid by the corporation. Since Mr. Darnell, the taxpayer in the case, owned stock in a Tennessee corporation that had paid no Indiana property tax, the Court reviewed the intangibles tax only in relation to that stock and did not consider whether the failure to allow for Indiana property tax paid by foreign corporations violated the Commerce Clause:

> The only difference of treatment disclosed by the record that concerns the [taxpayer] is that the state taxes the property of domestic corpo-

> rations and the stock of foreign ones in similar cases. That this is consistent with substantial equality not-withstanding the technical differences was decided in *Kidd v. Alabama*, 188 U.S. 730, 23 S. Ct. 401, 47 L. Ed. 669 (1903).[6]

Darnell, 226 U.S. at 398, 33 S. Ct. at 121, 57 L. Ed. at 273.

The North Carolina court found in North Carolina's intangibles tax the same "substantial equality" this Court found in *Darnell*. It concluded that N.C. GEN. STAT. § 105-203 creates "the very kind of 'compensating' tax scheme the Supreme Court upheld in *Darnell*." *Fulton Corp. v. Justus*, 338 N.C. at 478, 450 S.E.2d at 732.[7]

[6]*Kidd* had rejected an Equal Protection challenge to an Alabama tax similar to Indiana's. It recognized that, in the case of "corporations formed and having their property and business elsewhere, the state must tax the stock held within the state if it is to tax anything." 188 U.S. at 732, 47 L. Ed. 669 at 672. Justice Holmes also explained in *Kidd* that a state levying a stock tax on shareholders may "look behind the present net values of different stock" and "may take into account [whether] the property and franchise of the corporation are untaxed" in the state. *Id.*

[7]The facts of this case did not require the North Carolina court to decide the question left unresolved by *Darnell*: whether a failure to allow for state tax paid by the issuing corporation causes an intangibles tax levy to violate the Commerce Clause. North Carolina's statute risks no such infirmity. It allows an offset for income tax paid at the corporate level without regard to whether the corporation is foreign or domestic.

Petitioner is simply mistaken in arguing that the North Carolina court misapplied *Darnell* by recognizing the state's corporate income tax rather than a corporate property tax as a proxy for the intangibles tax on stock values. As the opinion below makes clear, corporate income produced by the entire enterprise and apportioned to North Carolina is far more closely related to corporate stock values than is the value of instate corporate property alone.

B. THE DECISION OF THE SUPREME COURT OF NORTH CAROLINA IS NOT IN CONFLICT WITH THIS COURT'S COMPENSATORY TAX DECISIONS.

Petitioner argues that the decision upholding North Carolina's intangibles tax on stock cannot be justified in light of this Court's recent decisions applying the compensatory tax analysis to a state tax found to discriminate against interstate commerce on its face.[8]

In support of this proposition Petitioner cites the Court to three compensatory tax decisions. The first is *Armco*, discussed above in connection with the internal consistency test. In considering whether the West Virginia tax on instate manufacturing compensated for the wholesaling tax on out-

[8]The Supreme Court of North Carolina made no finding of facial discrimination but did, in its discussion of the continuing validity of *Darnell*, distinguish this case from the compensatory tax cases Petitioner relied upon before that court.

of-state manufacturer/wholesalers, the Court in *Armco* observed that manufacturing and wholesaling are not "substantially equivalent events." The Court went on to examine certain features of the manufacturing tax and, on that basis, to conclude that the manufacturing tax was indeed a tax on manufacturing alone and that it was not intended as a proxy for the wholesaling tax on out-of-state enterprises. Petitioner ignores this more extensive analysis of the tax structure and instead seizes upon the phrase "substantially equivalent events" as if it capsulized the Court's entire view of the issue.

In this vein, Petitioner also cites the Court to *Oregon Waste Systems, Inc. v. Department*, __ U.S. __, 114 S. Ct. 1345, 128 L. Ed. 2d 13 (1994), in which it had been argued that a waste disposal surcharge levied upon out-of-state businesses bringing nonhazardous waste into Oregon from out of state was offset by the general tax burden borne by their Oregon counterparts. In this context the Court found that taxes on earning income and taxes on landfills were not directed at substantially equivalent events.

Finally, Petitioner cites to *Associated Industries of Missouri v. Lohman*, __ U.S. __, 114 S. Ct. 1815, 128 L. Ed. 2d 639 (1994), to demonstrate that the existence of a compensatory tax scheme must be proved with mathematical precision. *Associated Industries* struck down Missouri's use tax in those local jurisdictions where the use tax on out-of-state purchases exceeded the sales tax.

Based upon these examples of the Court's compensatory tax analysis, Petitioner states that the intangibles tax and the corporate income tax are levied at different rates and that owning stock and earning income are not substantially equivalent events, and it concludes without further analysis that the two taxes, therefore, cannot be compensatory. Petitioner's reasoning disregards the inherent equivalency this Court found in *Darnell* by virtue of the relationship between a corporation and its shareholders. It also ignores the 101 taxable percentages provided for in N.C. GEN. STAT. § 105-203 and the precision with which they balance the intangibles tax borne by shareholders and the income tax borne by corporations.

Petitioner's argument also blurs a fundamental distinction between the cited cases and the present one. As the Supreme Court of North Carolina noted, this Court's recent compensatory tax cases have uniformly dealt with taxes levied upon the interstate movement of goods, the quintessential Commerce Clause concern. This one, by contrast, involves a property tax paid only by state residents and having little if any potential impact on interstate commerce. One may view this distinction, as the North Carolina court did, as grounds for distinguishing the cases. Alternatively, the cases can be harmonized as instances of case-by-case analysis geared to the practical implications for interstate commerce. Whichever understanding is correct, there is no conflict between the decision below and those of this Court, and no further review by the Court is required.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

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APPENDIX

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PAGE 161 FROM U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, SIGNIFICANT FEATURES OF FISCAL FEDERALISM: BUDGET PROCESSES AND TAX SYSTEMS (1993)

Table 45

Details of Intangibles Tax Base by State

State	Base Items (see key at end of table)	Number
Alabama	A,B	2
Florida	A,B,E,F,H,O	5
Georgia	A,[1]B,C,D,E,I,J,K,L,M,O	11
Iowa	O	1
Kansas	A,B,C,D,E,[2]F,H,I,O	9
Kentucky	A,[1]B,C,D,E,F,G,H,I,J,K,L, M,O	14
Louisiana	A,[1]B,[1]E,[1]O	4
Michigan	A,B,C,D,E,F,H,I	8
Mississippi	O	1
Missouri	O	1
New Hampshire	A,B,C,E,G,I,O	7
North Carolina	A,[1]B,E,F,H	5
North Dakota	O	1
Ohio	O	1
Pennsylvania	A,[3]B,E,I,O	5

[1] Equities of firms paying selected other state taxes may be exempt from this tax.

[2] Mortgages and notes secured by in-state real property are exempt.

[3] Types of firms whose equities are subject to tax is very limited.

Rhode Island	C	1
Tennessee	A,[3]B,[4]C,[4]E,[4]H,I,[4]O	7
Texas	O	1
Washington	N	1
West Virginia	A,B,F,G,I,J,K,M,O	9
Wyoming	O	1

Key to Intangible Base Categories [number of states]

A-Equities [12]
B-Bonds [12]
C-Deposits [7]
D-Cash [4]
E-Mortgages [10]
F-Accounts receivable [6]
G-Cash value of insurance policies [3]
H-Interest in trusts [6]
I-Other financial instruments [8]
J-Patents [3]
K-Copyrights and trademarks [3]
L-Licenses [2]
M-Franchises [3]
N-Computer software [1]
O-Other [17]

Source: John H. Bowman, George E. Hoffer, and Michael D. Pratt, "Current Patterns and Trends in State and Local Intangibles Taxation," *National Tax Journal*, December 1990.

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[4] Income subject to intangible personal property tax if duration of instrument contract is six months or greater.